

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: SHINPO=1

In re Application of:)	Confirmation No.: 2252
)	
Akira SHINPO et al.)	Art Unit: 1626
)	
IA. No. PCT/JP2004/010334)	
Filing Date: July 21, 2004)	
)	
Appln. No.: 10/565,592)	Examiner: J. R. Kosack
371(c) Date: January 23, 2006)	
)	
For: METHOD AND DEVICE FOR)	July 29, 2008
CULTURING LIVING CELLS...)	

REPLY TO RESTRICTION AND ELECTION REQUIREMENTS

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building, 401 Dulany Street
Alexandria, VA 22314

Sir:

Applicants are in receipt of the Office Action mailed June 30, 2008, in the nature of requirements for restriction and for elections of species, on the basis of purported lack of unity of invention. Applicants reply below.

First, however, applicants respectfully request the PTO to acknowledge receipt of applicants' papers filed under section 119.

Restriction has been required among what the PTO has identified as being three (3) separate inventions which are presumably believed by the PTO to be patentably distinct from one another. As applicants must make an election even though the requirement is traversed, applicants hereby respectfully and provisionally elect Group I, comprising claims 1 and 2, directed to a cyanine dyes of general formula 2, with traverse and without prejudice.

Claims 1 and 2 cover all three groups, and therefore claims 1 and 2 are clearly generic. As such, they inherently relate to a single general inventive concept under PCT rule 13.1 because, under PCT rule 13.2, they possess the same or corresponding special technical feature or features as recited in claims 1 and 2. Moreover, in view of the generic nature of claims 1 and 2, the requirement is fundamentally flawed as being inconsistent with *In re Weber et al*, 198 USPQ 328, 331(CCPA 1978), because the requirement in effect is an attempt by the PTO to make applicants limit their claims without imposing a rejection.

Withdrawal of the requirement is respectfully requested.

In addition to the restriction requirement, the PTO has also required applicants to elect a single species. Again, as applicants must make an election even though the

requirement is traversed, applicants hereby respectfully and provisionally elect the species of Chemical Formula 1, which appears at the top of page 9 of the specification. Both claims 1 and 2 read on (cover) the elected species.

The reasoning of the requirement is that the species "do not share the same constant core structure." Applicants respectfully disagree with the PTO's conclusion because the single general concept under PCT rule 13.1 is defined by the generic nature of claims 1 and 2. As there is no evidence that claims 1 and 2 do not define a single general inventive concept under PCT rules 13.1 and 13.2, it must be accepted that unity of invention exists, and the requirement therefore should be withdrawn. Such as respectfully requested.

Applicants now respectfully await the results of a first examination on the merits.

Respectfully submitted,

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